UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

HANFORD ENVIRONMENTAL
HEALTH FOUNDATION[1]

Employer

And Case 19-RC-14434

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 1439,
AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record[2] in this proceeding, the undersigned makes the following findings and conclusions.[3]

SUMMARY

The Employer is a Washington non-profit corporation, which has an office in Richland, Washington, and which provides health care services for employees on the Hanford Site ("Hanford") pursuant to contracts with government entities. The Employer's current contract with the U.S. Department of Energy ("DOE") to provide those services is effective from October

[1] The Employer's name appears as corrected at the hearing.

[2] Both parties filed timely briefs, which were duly considered. The cover letter attached to the Employer's brief requests that I transfer this case to the Board in Washington, D.C. for decision because of my "knowledge of facts pertinent to this matter that are not part of the official record." Apparently, the Employer provided the Petitioner with a copy of its request because on the date that this Decision and Direction of Election issued, the Petitioner faxed in a letter to the Region essentially requesting the Region provide Petitioner with any information not a part of the record and considered by me in issuing this Decision and Direction of Election. With respect to the Employer's request, the Employer has not provided any evidence or legal authority to support its request. In the absence of such evidence or legal authority and in light of the fact that my decision in this matter is based **solely** on the record evidence, I deny the Employer's request. With respect to the Petitioner's request, I need not pass on it in view of the above.

[3] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization herein involved claims to represent certain employees of the Employer and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

1, 1998, through September 30, 2003. The Petitioner filed the instant petition on July 28, 2003,[4] and seeks to represent all full time and regular part time medical assistant technicians, primary care medical technicians, and radiological technologist/medical technicians employed by the Employer.[5] The Employer contends that I should dismiss the petition because it will cease operations and not employ the unit employees after September 30 if DOE accepts another contractor's bid to provide the medical services at Hanford. Contrary to the Employer, the Petitioner argues that I should direct an election in the unit sought because any cessation in the Employer's operations is uncertain and the unit employees have a reasonable expectation of continued employment providing these services at Hanford.

Based on the record evidence and the arguments presented by the parties, I conclude that the Employer has failed to show that its cessation of operations is certain and imminent and that the proposed unit employees will have no work to perform. Accordingly, I shall direct an election in the appropriate unit sought by the Petitioner.

Below, I have provided a section setting forth the facts, as revealed by the record in this matter and relating to background information about the Employer's operations, possible cessation of those operations at Hanford, and unit employees' preferential hiring rights at Hanford. Following the facts section is a restatement of the parties' positions, my analysis of the applicable legal standards in this case, a section directing an election, and a section setting forth the right to request review of my Decision and Direction of Election.

A.) FACTS

1.) The Employer's Historical Operations and Possible Cessation of those Operations at Hanford

The Employer provides health care and occupational medical services for the approximately 10,000 workers at Hanford out of its clinic in Richland and a satellite operation located within Hanford.[6] The services provided include laboratory testing, medical testing, and radiological testing. The Employer has provided these services pursuant to a series of contracts with DOE since approximately 1965. Since at least 1985, it appears that DOE has simply renewed its contract with the Employer rather than resorting to putting the contract out for bid through a Request for Proposals ("RFP") process.[7] The record does not reveal whether contracts were renewed or put out to bid through a RFP between 1965 and 1985.

Under the terms of the current contract between the Employer and DOE, the Employer is required to provide the medical services at Hanford at least through September 30, unless terminated sooner. The contract further provides that the contract may be extended at the sole option of DOE by written notice to the Employer 60 days prior to the September 30 expiration date. Neither party presented any evidence at the hearing regarding whether DOE had notified

---

[4] All dates are in 2003 unless otherwise indicated.

[5] As noted in more detail below, the parties stipulated to the appropriateness of the unit in which I am directing an election.

[6] Thus, reference herein to the Employer's operations at Hanford includes the Employer's Hanford satellite and Richland clinic locations.

[7] The Employer's attorney stated on the record that it was his "understanding" that the Employer had not had to compete for the DOE contract under a bidding procedure since 1985. Neither party presented any witnesses to support or refute that claim.

the Employer about extending its contract.[8] The Employer acknowledged that DOE and the Employer could mutually agree to extend the contract but there is no evidence that the parties had attempted to reach such an extension as of the hearing date.

Around March 25, DOE posted a RFP that solicited contract bids to perform the medical services work that the Employer is performing at Hanford.[9] Bids pursuant to that RFP were due on May 23. Due to its interest in continuing to perform such work at Hanford, the Employer filed a timely bid with DOE in response to the RFP. The Employer has not bid on any other work at Hanford and does not perform any other work at that location. The record does not contain any evidence concerning which other entities, if any, have submitted bid proposals to perform that work.[10] The RFP does not state when DOE must decide or announce which entity will receive the new contract. As of the date of the hearing, DOE had not announced any decision concerning the award of the new contract.

In response to the hearing officer's questions, the Employer did not present any evidence of a plan adopted by the Employer to cease operations in the event that DOE does not award the new contract to the Employer. The Employer also did not present any evidence of a plan to reduce its workforce in the event that it is not awarded the new contract.

2.) Proposed Unit Employees' Preferential Hiring Rights

Section H.12 of the RFP addresses preferential hiring rights for the incumbent contractor's workforce in the event that DOE selects a new contractor to perform the medical services work at Hanford. Subsection a) of that section provides that with respect to non-management personnel, the new contractor agrees to hire qualified employees from the workforce of the incumbent contractor. Subsection b) of that section further provides that if those employees accept the offer of employment, the new contractor must pay base salary and pay rates equivalent to those paid by the incumbent contractor if the positions for which they are hired entail equivalent duties and responsibilities. Subsection c) of that section also provides that the new contractor shall credit hired employees' length of service accrued with the incumbent contractor towards the service period required for various employee benefits such as vacations and sick leave. Subsection a) of the section does specify that the new contractor has the discretion to determine the number and type of positions to be established, as well as the terms and conditions of employment other than the above specified base salary/pay rates and benefit eligibility determinations.

In 1995, DOE implemented the Hanford Site Work Force Restructuring Plan ("HSWFRP"). As the executive summary of that plan states, the HSWFRP sets forth the actions that DOE would take to "minimize the impacts on employees and the community [resulting from the elimination of positions at Hanford] including separation incentives, retraining, outplacement, preferential hiring requirements, post-employment benefits and community impact assistance . . . ." The HSWFRP includes a Preference in Hiring section, which states that DOE and its contractors and subcontractors will grant a preference in hiring to involuntarily separated workers at Hanford. The order of preference listed is 1) former employees who are in layoff

[8] The Petitioner claims in its brief that the contract has been extended until December 31. The Petitioner's unsubstantiated claim is not supported by any evidence in the record before me.

[9] The record evidence does not contain any evidence suggesting that DOE is dissatisfied with the Employer's performance under the current agreement.

[10] Although the Employer's attorney claimed that it was the Employer's understanding that "other entities" had bid on the contract, he did not offer any evidence to substantiate that understanding.

status; 2) eligible workers of other DOE contractors and subcontractors at Hanford; 3) eligible workers of other DOE contractors and subcontractors at other locations.

B.) POSITION OF THE PARTIES

The Employer contends that dismissal of the petition is warranted because its contract with the government is scheduled to expire on September 30, and it is unknown whether the Employer will continue its operations after that date. It argues that the DOE may replace the Employer because it has taken the unusual step of requesting bids for the work and that there is no guarantee that another contractor, if selected, would hire unit employees.

The Petitioner contends that dismissing the petition or delaying its processing is not warranted because the work is ongoing and there is no evidence to show that the Employer will not continue to perform the work as it has done for nearly 40 years pursuant to contracts with DOE. It also argues that the proposed unit employees have a reasonable expectation of employment even if another contractor is selected to perform the work because of preferential hiring requirements that exist with the job.

C.) ANALYSIS

Under long-standing Board precedent, the Board will not order an election where the cessation of an employer's operations and permanent layoff of its employees are certain and imminent. See, e.g., *Hughes Aircraft Co.*, 308 NLRB 82 (1992); *M.B. Kahn Construction Co., Inc.*, 210 NLRB 1050 (1974). However, the Board will not dismiss a petition or decline to hold an election based on mere speculation concerning the uncertainty of an employer's future operations. *Hazard Express, Inc.*, 324 NLRB 989, 990 (1997). Accord *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309 (1976).

Applying the above principles in the instant case, I find that an election should be directed in the stipulated unit. The Employer has not presented evidence sufficient to establish that its alleged closure of operations at Hanford is certain and imminent. Although the Employer's current contract is scheduled to expire on September 30, the evidence does not establish that DOE will not renew or extend the contract. Rather, the Employer speculates only that it may have to close its operations because DOE may select another contractor to perform the medical services work that the Employer has performed for nearly 40 years at Hanford. Such speculation, of course, is insufficient to warrant dismissal of the petition. *Hazard Express, Inc.*, supra; *Canterbury of Puerto Rico, Inc.*, supra.

I further find that the evidence before me suggests that it is just as likely, if not more likely, that the Employer will continue to perform the occupational medical services work at Hanford after September 30. It is noteworthy that the Employer has a substantial history of performing the work pursuant to a series of contracts with DOE. It has also revealed its intent to continue performing that work by bidding on the work in response to the most recent RFP. In these circumstances where the Employer has performed past and current work, and is bidding on future work within the unit sought by the Petitioner, the Board has found that an immediate election is warranted. *Fish Engineering & Construction*, 308 NLRB 836 (1992)[11] (where

[11] The Employer has not provided any legal authority to support its novel claim that the Board's decision in that case does not constitute valid precedent because only 2 Board Members (out of a panel of 3), rather than a majority of the full Board, decided the case and directed an election. I reject the Employer's contention and find that the 2-1 majority panel decision is valid precedent

employer had performed past and current work, and was bidding on future work within the unit, Board directs an election even though the current projects were scheduled to cease in 2 months and it was not certain that the employer would be awarded the future work).[12] Although the Employer contends that DOE's issuance of a RFP requiring the Employer to compete for the work is unusual, I find that issuance of the RFP alone does not establish or even suggest that DOE will not select the Employer again to perform the work, particularly where the record does not contain any evidence suggesting that DOE is dissatisfied with the Employer's performance over the past four decades.

In agreement with the Petitioner, I further find that an election should be directed because the proposed unit employees have a reasonable expectation that their employment will continue after the current contract expires on September 30. It is undisputed that the unit work of providing medical services to workers at Hanford will continue on an ongoing basis regardless of the contract's expiration. As noted above, it is reasonable to assume that DOE will again contract with the Employer to perform these services as it has done for nearly 40 years. Also supporting my conclusion of reasonable expectation of future employment is the preferential hiring rights that unit employees have under the RFP and the HSWRP. Thus, even if DOE selects another contractor to perform the medical services work, these hiring preferences establish a reasonable expectation that the new contractor will hire unit employees to continue performing the same work. Although the Employer is correct that the RFP does not guarantee future employment to all unit employees, such a guarantee is unnecessary to establish a reasonable expectation of employment, particularly where the new contractor has agreed to hire the incumbent contractor's qualified employees to fill the positions necessary to perform the same work.[13]

Based on the above analysis, I conclude that the record evidence does not establish that the Employer's cessation of operations at Hanford is clear and imminent. The cases cited by the Employer do not warrant a different conclusion. In all of the cases cited by the Employer,[14] the evidence established that it was certain that the project work being performed by the proposed unit employees would cease imminently and there was an absence of evidence showing that the unit employees would have other work to perform when that project work ended. By contrast, the current work being performed by the Employer's employees is not project work that is scheduled to end imminently, and there is no evidence to demonstrate that it is certain or reasonably certain that the proposed unit employees will not be performing this

---

where the Board in that case (as it does in the vast majority of cases) "delegated its authority . . .to a three-member panel."

[12] Contrary to the Employer, I do not find that the Board's decision in that case is distinguishable because the employer's bid there was unsolicited whereas the Employer's bid here was solicited. There is no indication from the Board's rationale in that case that the fact that the employer's bid was unsolicited had any relevance to its conclusion that an election should be directed.

[13] I also disagree with the Employer's contention that the employees' reasonable expectation of employment with a successor employer is not a valid consideration under Board precedent. See, e.g., *Texas Eastman Company,* 175 NLRB 626 (1969) (where the employer named in petition terminated its contract, but the successor employer performed the same work, on the same project, for the same customer, at the identical location. There, the Board found that the petition should be processed and an election directed with the successor employer's name added to the petition.).

[14] *Davey McKee Corp.*, 308 NLRB 839 (1992); *M.B. Kahn Construction Co.*, 210 NLRB 1050 (1974); *General Motors Corp.*, 88 NLRB 119 (1950); *Todd-Galveston Dry Docks*, 54 NLRB 625 (1944); *Fraser-Brace Engineering Co.*, 38 NLRB 1263 (1942); and *Fruco Construction Co.*, 38 NLRB 991 (1942).

work for an indefinite period of time. Rather, the Employer argues only that there is a possibility that the employees will not continue to perform the same work because DOE might select another contractor and if that happens, the new contractor might not hire some of the current employees. However, the record evidence does not support the Employer's arguments.

Accordingly, I shall direct an election in the unit that the parties have stipulated as appropriate.[15] That unit is described as follows:

> All full-time and regular part-time medical assistant technicians, primary care medical technicians, and radiological technologists/medical technicians employed by the Employer at its Richland, Washington facility, excluding all nurses, office clerical employees, and all other employees, guards and supervisors as defined in the Act.

There are approximately 12 to 14 employees in the unit found appropriate.[16]

D.) DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike, which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by United Food and Commercial Workers Union, Local 1439, AFL-CIO.

1.) List of Voters

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them.

---

[15] The Petitioner petitioned for a unit of medical technicians but at the hearing the parties stipulated to the appropriateness of the unit in which I am directing an election. The record reveals no history of collective bargaining with respect to the stipulated unit but the record does reflect that a separate unit of nurses employed by the Employer is represented by a labor organization.

[16] All of the employees in the unit provide medical services required of the Employer by its contract with DOE. At the time of the hearing, the Employer employed 12 unit employees with an additional two vacant positions.

Excelsior Underwear, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co*., 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Ave., 29th Floor, Seattle, Washington 98174, on or before, August 29, 2003. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

2.) Notice Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

3.) Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington, D.C., by 5 p.m. EST on September 5, 2003. The request may not be filed by facsimile.

DATED at Seattle, Washington, this 22nd day of August 2003.

_____

Brian J. Sweeney, Acting Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, WA 98174

347-8020-6000, 347-8020-8000, 347-8020-8050